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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
Illinois Commerce Commission)
On Its Own Motion,)
)
Petitioner,)
)
v.)
)
Iowa Pacific Holdings - Chicago)
Terminal Railway,)
)
Respondents.)
)
Citation with respect to Chicago)
Terminal Railway and the failure)
to maintain various highway-rail)
grade crossing surfaces in)
accordance with the requirements)
of 92 Ill. Adm. Code 1535-203.)

No. T16-0076

Chicago, Illinois
October 4, 2016

Met pursuant to notice at 2:00 p.m.

BEFORE:
TIMOTHY E. DUGGAN, Administrative Law Judge.

1 APPEARANCES:

2 ILLINOIS COMMERCE COMMISSION, by
3 MR. BRIAN M. VERCROYSSSE
4 527 East Capitol Avenue
Springfield, Illinois 62701
(312) 636-7760

5 Appearing on behalf of the Staff of
6 the Illinois Commerce Commission;

7 IOWA PACIFIC HOLDINGS LLC, by
8 MR. DAVID LOPEZ MICHAUD
118 South Clinton Street, Suite 400
Chicago, Illinois 60661-5772
(312) 466-0900

9
10 Appearing on behalf of Iowa Pacific
Holdings LLC;

11 CITY OF CHICAGO, ASSISTANT CORPORATION COUNSEL, by
12 MR. JARED W. POLICICCHIO
30 North LaSalle Street, Suite 1400
Chicago, Illinois 60647
13 (312) 744-1438

14 Appearing on behalf of the City of
15 Chicago.

16 Also Present:
Mr. Joe Alonzo

17 SULLIVAN REPORTING COMPANY, by
18 Brad Benjamin, CSR
License No. 084-004805

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I N D E X

<u>Witnesses:</u>	<u>Examination</u>	By <u>Examiner</u>
Brian M. Vercruysse	8	Judge Duggan
Joe Alonzo	39	Judge Duggan

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
Staff Group Exhibit No. 1	65	23
Staff Exhibit No. 2	65	23
Staff Exhibit No. 3	65	23

1 JUDGE DUGGAN: Pursuant to the authority vested
2 in me by the State of Illinois and the Illinois
3 Commerce Commission, I now call Docket T16-0076 for a
4 hearing.

5 May I have the appearances, we'll
6 start with the Commission staff.

7 MR. VERCROYSSSE: Thank you, your Honor.

8 Brian Vercruysse, V, as in Victor,
9 E-R-C-R-U-Y-S-S-E, representing the Rail Safety
10 Section of the Illinois Commerce Commission. Phone
11 number, (312) 636-7760; address, 527 East Capitol
12 Avenue, Springfield, Illinois 62701.

13 Thank you.

14 JUDGE DUGGAN: Okay. Thanks again.

15 And Mr. Michaud for Iowa Pacific
16 Holdings?

17 MR. MICHAUD: David Michaud, I hold the title
18 of General Counsel for Iowa Pacific Holdings. Iowa
19 Pacific Holding [sic] is the parent company of
20 Chicago Terminal Railway. My company's address is
21 118 South Clinton, Suite 400, Chicago, 60661; phone
22 number's (312) 667-0377.

1 JUDGE DUGGAN: Very good.

2 And let the record show that also here

3 today is Mr. Joe Alonzo with the City of Chicago

4 Department of Transportation and the City legal

5 department attorney Jared Policicchio.

6 We'll simply note at this point that

7 there's been no formal petition to intervene and --

8 but both Mr. Vercruysse and Mr. Michaud are going to

9 be relatively flexible with the input of the City's

10 legal department. However, I think that we will

11 simply have testimony from Mr. Alonzo and allow the

12 legal department to suggest approaches to help

13 resolve this matter.

14 But that being given, why don't you go

15 ahead and tell us your name, your office address, and

16 who you represent, Mr. Policcichio.

17 MR. POLICICHIO: Sure.

18 Jared, J-A-R-E-D, Policicchio

19 P-O-L-I-C-I-C-C-H-I-O, with the City of Chicago Law

20 Department. Address is 30 North LaSalle Street,

21 Suite 1400, Chicago. And I'm j- --

22 JUDGE DUGGAN: Thank you.

1 Are you done?

2 MR. POLICICHIO: Yes, I'm done. I'm joined by
3 Mr. Joe Alonzo.

4 JUDGE DUGGAN: Thank you.

5 Before we went on the record today, we
6 reviewed the exhibits that Mr. Vercruysse intends to
7 produce. We'll make a note that I'm in Springfield
8 and everyone else is in Chicago, and so it's
9 sometimes hard to see things by exhibits that aren't
10 either directly in front of me or because of the
11 quality of certain photographs. So Mr. Vercruysse
12 was able to explain to me what he hopes to be able to
13 prove with his exhibits in the photographs and the
14 videos.

15 We then discussed part of Iowa Pacific
16 Holdings' positions which they will be restating here
17 on the record today, and what can be done
18 cooperatively to hopefully resolve the issue and how
19 to make it enforceable and the time frames and
20 followups, assuming that, in fact, the evidence
21 establishes a need for repairs in order -- and in
22 order to do so.

1 So, now, Mr. Alonzo and
2 Mr. Vercruysse, please raise your right hands.
3 Do solemnly swear the testimony you'll
4 give today will be the truth, the whole truth, and
5 nothing but the truth?
6 Mr. Vercruysse?
7 MR. VERCruysse: I do.
8 JUDGE DUGGAN: Mr. Alonzo?
9 MR. ALONZO: I do.
10 JUDGE DUGGAN: Thank you very much.
11 We'll note that Commission Staff,
12 Mr. Vercruysse, is going to offer the following
13 exhibits: Exhibit 1, which -- do you have these in
14 front of you, Mr. Michaud?
15 MR. MICHAUD: I have access to them by way a of
16 Brian here. So that's...
17 JUDGE DUGGAN: Okay. Exhibit 1, which --
18 page 1 consists of four maps showing locations of the
19 two crossings at issue; page 2 of Group Exhibit 1,
20 which shows the crossing at North Avenue; page 3 of
21 Group Exhibit 1, which shows repairs to the
22 southbound lanes of York Road, which is simply there

1 to show that these repairs have been made and they
2 are holding up apparently. And then page 4, Exhibit
3 1, which is the northbound lanes of York Road at the
4 same intersection, which will be presented to show a
5 present state of disrepair. And then Video 2 will be
6 a video -- excuse me -- Exhibit 2 will be video of
7 the North Avenue crossing, and Exhibit 3 will be a
8 video of York -- York Road crossing.

9 Is that a correct summary of what the
10 exhibits are that you plan to introduce,
11 Mr. Vercruysse?

12 MR. VERCRUYSSSE: Yes, your Honor.

13 JUDGE DUGGAN: Okay.

14 BRIAN M. VERCRUYSSSE,
15 called as a witness herein, having been first duly
16 sworn, was examined and testified as follows:

17 EXAMINATION

18 BY

19 JUDGE DUGGAN:

20 Q So do you want to proceed with your
21 exhibits in describing them or do you want to proceed
22 with a preliminary on -- a summary of the history of

1 these intersections and why you've been following
2 them and why we're here today instead of having them
3 repaired?

4 A If I could start with the summary, I'd
5 appreciate it, your Honor.

6 Q Very good.

7 A Great. Thank you.

8 Your Honor, the two crossings that
9 Staff would like to present today, the first is
10 Illinois Route 64, North Avenue in the City of
11 Chicago, and then the second is York Road at the
12 Terminal Rail Company in the city of Bensenville.
13 The York Road crossing is the under the jurisdiction
14 of DuPage County.

15 For both of these crossings, we have
16 contacted Mr. Michaud, the City of Chicago, and also
17 DuPage County to try to coordinate repairs that are
18 necessary. It's my understanding, and from this
19 coordination, that it's not a matter of whether the
20 work is needed or that the railroad is not willing to
21 do it, it has been more a matter of finances for the
22 railroad. And we can discuss those further on the

1 record, but at this time I would like to take us
2 through Group Exhibit 1 and then through the videos,
3 Exhibit 2 and 3, to give just a general sense of the
4 condition of the crossings as well as their
5 locations.

6 Is that satisfactory to you?

7 Q That would be, except I think it would be
8 appropriate to let Mr. Michaud respond to the
9 representations made so far, first.

10 A Thank you.

11 MR. MICHAUD: I don't have any objection to
12 Brian's representations.

13 JUDGE DUGGAN: Very good.

14 BY JUDGE DUGGAN:

15 Q Then you want to proceed with your
16 exhibits?

17 A Yes, your Honor, and you've given a
18 description already on the record as far as what the
19 pages are, so I'll be brief.

20 Group Exhibit 1 on page 1 provides the
21 location maps. The upper half with red highlight and
22 circles shows the North Avenue crossing, which is

1 located east of the Kennedy Expressway along
2 North Avenue and just east of the Chicago River.
3 It's highlighted on this exhibit, as I noted, in the
4 red circle highlight on the top.

5 The York Road crossing is along the
6 western perimeter of O'Hare Airport and is a
7 five-lane roadway with two lanes northbound, two
8 lanes southbound, and a flush median. That's
9 identified on page 1 in the location maps with a
10 yellow highlight and circle.

11 Going to page 2 of Group Exhibit 1, it
12 is a photograph of the North Avenue crossing that was
13 taken on June 15th, 2016, and what is shown in this
14 picture towards the center is --

15 Q What is -- was the date?

16 A June 15th, 2016.

17 Q Thank you.

18 A And Staff had visited the crossing after
19 receiving inquiries from the City of Chicago as to
20 some of the repairs that were previously completed by
21 the Chicago Terminal Railway that had not held up.
22 And the exhibit and photographs specifically shows a

1 red arrow pointing to a section of the crossing that
2 is in the eastbound lane and in the inner most lane.

3 It's a rubber crossing surface panel
4 that had remained and was thought to be suitable with
5 the previous repairs, but what had happened is that
6 it had settled to a different elevation with the
7 pavement. And then there was actually asphalt patch
8 that was also put in that created a little bit more
9 of a hump that was of a higher elevation than the
10 other pavement. So Staff's --

11 Q And you identified that asphalt --
12 identified asphalt -- lump in the exhibit?

13 A In the exhibit, from the red arrow that's
14 located in the center of the photograph, it is
15 pointing at the rubber surface panel. The asphalt is
16 then just adjacent to that panel, just to the east,
17 and within the shadow or underneath the back side of
18 the small Sedan in the photograph.

19 Q Okay. And so the rubber panel at that
20 point has settled low and the asphalt is above the --
21 well, the level of the road at that point, correct?

22 A Yes.

1 Q Okay.

2 A And video in Exhibit 2 that I intend on
3 showing will highlight how traffic moves along in the
4 other lanes in a satisfactory manner, but that in
5 this section there is the bump, as I previously
6 mentioned.

7 Are there any further questions on
8 page 2 with the photograph?

9 JUDGE DUGGAN: If we're going to move on to
10 York, then, yeah, let's go ahead and give Mr. Michaud
11 an opportunity on North Avenue in that exhibit.

12 MR. MICHAUD: No objection, your Honor.

13 JUDGE DUGGAN: Do you have anything on that?

14 MR. MICHAUD: No objections.

15 JUDGE DUGGAN: Nothing you say? Okay. Very
16 good.

17 BY JUDGE DUGGAN:

18 Q So, yeah. Go ahead and go on to pages 3
19 and 4 of York.

20 A Thank you, your Honor.

21 Group Exhibit 1, page 3 of 4, shows
22 repairs that were completed to the southbound lanes.

1 Those repairs were completed on April 11th, 2016.

2 That was a coordinated effort with the Chicago
3 Terminal Railway and DuPage County Highway
4 Department. DuPage County Highway assisted with
5 traffic control and other measures so that the
6 Chicago Terminal forces could complete the work.

7 Through this section, the crossing
8 surface was comprised of rubber crossing surface
9 panels. Those were all removed and replaced with
10 asphalt that was compacted, and it has been holding
11 up.

12 Going to page 4 of 4 of Group
13 Exhibit 1, this is the northbound lanes where the
14 rubber crossing surface panels remain and are in a
15 state of disrepair. Where elevations are off, panels
16 have failed in which they're settled or vehicles can
17 compress them creating bumps and jarring, and that is
18 present on both of the northbound lanes through this
19 section.

20 Staff has witnessed that vehicles as
21 they travel northbound, they will swerve into the
22 center median area or turn area to avoid these

1 northbound lanes. The video, as Exhibit 3 that I
2 intend on showing, will show the driver's perspective
3 traveling north on York Road.

4 So I'm open to any questions with
5 these two pictures or any other comments or concerns.
6 Staff has reached out to Mr. Michaud and also with
7 DuPage County identifying that these repairs are now
8 needed to the northbound lanes, similar to what was
9 completed for southbound.

10 Q Okay. Let me ask you this: I'm going to go
11 back to the -- North Avenue and ask you if you have
12 measured the variations from the -- what is the
13 otherwise -- tape at level of the street and measure
14 the variations at the point of the settling of the
15 rubber panel or the raising of the asphalt?

16 A Your Honor, I did not take any
17 measurements.

18 Q Okay. By your -- were you close enough to
19 observe it to estimate the height differences?

20 A Yes, your Honor.

21 Q And what did you observe? What's your
22 estimate of the height differences?

1 A Approximately three inches difference
2 between the bump of asphalt down to the lower section
3 of the rubber crossing surface panel.

4 Q Okay. And when you observed that traffic,
5 did you observe the vehicles taking any special
6 precautions in approaching it or any consequences of
7 failing to take precautions?

8 A Your Honor, I observed the vehicles going
9 over the bump and just hitting it and having a
10 rougher ride. I did not see or recall vehicles
11 swerving at this point.

12 JUDGE DUGGAN: Okay. And Mr. Michaud, I could
13 keep asking you or you can jump in wherever you need
14 to. Okay?

15 MR. MICHAUD: Okay. I can say --

16 JUDGE DUGGAN: This --

17 MR. MICHAUD: -- we have not received any calls
18 from motorists, directly. Every once in a while we
19 do get calls about crossings, but I don't have any
20 knowledge of getting a call on this particular
21 crossing.

22

1 BY JUDGE DUGGAN:

2 Q Mr. Vercruysse, did you say that you did
3 get calls on this crossing?

4 A I've received calls from the City of
5 Chicago. I've received calls from the Federal
6 Railroad Administration on behalf of a state -- on
7 behalf of a U. S. representative. Forgive me, I do
8 not know which representative that is now. But
9 mainly my contact has been through the alderman's
10 office and then also through the Federal Railroad
11 Administration.

12 Q Very good.

13 And northbound, you said you -- or the
14 York Road, did you say you got calls on that one?

15 A York Road: DuPage County checks in with me
16 at least on a monthly basis, and they have identified
17 that they've received calls from the city of
18 Bensenville.

19 Q And what does the City of Bensenville have
20 to do with this?

21 A This -- the crossing's located within the
22 corporate limits of the city of Bensenville. So it

1 was just another -- you asked as far as other
2 complaints that were provided, but my conduit is
3 through DuPage County.

4 Q Very good.

5 Okay. You want to present your
6 videos?

7 A Yes, your Honor.

8 For a moment, can we go off the record
9 while we try and switch the screens so you can see
10 them? Or if --

11 Q Yes.

12 A -- you don't need to, that's fine.

13 Q Oh, no. No. I want to see them.

14 (A discussion was held off
15 the record.)

16 JUDGE DUGGAN: So, Mr. Benjamin, we're back on.
17 And -- okay.

18 We were off the record for a second to
19 get the audio/visual equipment working, and
20 Mr. Vercruysse is ready to run the video, which is
21 Exhibit 2.

22

1 BY JUDGE DUGGAN:

2 Q So please, go ahead.

3 A Thank you, your Honor.

4 The video that I will run for you in
5 just a minute is 25 seconds long. It's identified as
6 Staff Exhibit 2. It was also filmed on June 15th,
7 2016. And what we see on the screen before us right
8 now is a red car in the lane that's in question; it's
9 the eastbound inner lane. And as I run this, we'll
10 see various motorists and cyclists going over the
11 crossing.

12 I'll let it run through for the first
13 25 seconds, or through the completion, and then I can
14 bring it back to the start and stop it at specific
15 points if anyone needs to see it.

16 Q Okay. One second.

17 Did you say this video was also taken
18 the same day as the photograph?

19 A Yes, it is.

20 Q Okay. Go ahead.

21 MR. MICHAUD: The photograph is dated
22 October 4th -- oh, no. I'm sorry.

1 JUDGE DUGGAN: No. June 15th, 2016.

2 MR. MICHAUD: Yeah, okay.

3 THE WITNESS: I'll roll the video.

4 (Whereupon a video was played.)

5 THE WITNESS: Your Honor, for the 25 seconds

6 through this segment, we've seen that traffic has

7 progressed on the westbound lanes within reason,

8 traveling over the crossing smoothly. Eastbound, in

9 the outside lane, there were bicyclists that were

10 traveling smooth over the crossing.

11 On that middle eastbound lane,

12 vehicles were approaching slower, and then there was

13 the bump that was held through this section due to

14 the settlement and that other asphalt patch that I

15 described.

16 So I can take it to different segments

17 if anyone would like to see, or we could run it

18 again.

19 JUDGE DUGGAN: I'm good with it. I don't need

20 to see it again or have it broken down.

21 Mr. Michaud?

22 MR. MICHAUD: No, I don't need to see it again

1 either.

2 JUDGE DUGGAN: Okay.

3 THE WITNESS: Thank you. So that would be
4 Staff Exhibit 2.

5 I'd like to show video, then, as Staff
6 Exhibit 3 of the York Road crossing. This is driving
7 northbound on York Road, and I'm in the farthest
8 right lane going northbound at this section, and it's
9 a 14-second video.

10 (Whereupon a video was played.)

11 THE WITNESS: Okay. Your Honor, for purposes
12 of the video, of the 14 seconds, at 12 seconds is
13 when the vehicle goes over the crossing, and at that
14 point it drops down into a bump section.

15 As the vehicle's approaching the
16 crossing, we can see the rubber crossing surface
17 panels and the other items that were shown in the
18 pictures in Group Exhibit 1.

19 Again, I'd --

20 BY JUDGE DUGGAN:

21 Q What did -- go ahead.

22 A Again, I'd be able to rewind it and take

1 anyone through the different segments if necessary.

2 Q That's good.

3 What day was that video taken?

4 A This video was taken on September 16th,
5 2016, the same day that Group Exhibit 1, page 4 of 4,
6 that photograph was taken.

7 Q What about -- okay -- page 3 of 4 was what
8 -- what --

9 A Page --

10 Q Is that -- what date was the photo taken?

11 A Page 3 of 4 was the repairs completed.
12 That is actually an older photograph from April 11,
13 2016, when I --

14 Q Okay. So --

15 A -- drove through the crossing, I did not
16 take another picture as the surface was holding at
17 the time.

18 Q That's good.

19 So now -- so the video -- or, excuse
20 me -- the picture for 4 was taken when?

21 A The picture for 4 was taken on
22 September 16th, 2016, the same day as the video that

1 was just shown as Exhibit 3.

2 Q Okay. Anything else, Mr. Vercruysse, on
3 evidence, not for remedy, but for evidence of the
4 need for repair?

5 A Nothing further in the way of evidence,
6 your Honor. Just at the appropriate time, Staff
7 would ask that the Staff Group Exhibit 1, Exhibit 2,
8 and Exhibit 3 be entered into evidence.

9 JUDGE DUGGAN: All right. Mr. Michaud, do you
10 have any objection to Group Exhibit 1 and Exhibits 2
11 and 3 being admitted into evidence?

12 MR. MICHAUD: No.

13 JUDGE DUGGAN: Okay. Then those exhibits are
14 admitted as Staff's Exhibit Group -- Staff's Group 1,
15 Staff's 2, and Staff's 3.

16 Thank you.

17 (Staff's Group Exhibit 1 and
18 Exhibits 2 and 3 were
19 admitted into evidence.)

20 BY JUDGE DUGGAN:

21 Q How are you planning on putting that on
22 e-Docket though?

1 A Your Honor, Group Exhibit 1, I will be able
2 to upload --

3 Q That one's not a problem.

4 What about 2 and 3?

5 A 2 and 3, generally, I would provide, I
6 guess, a physical media, a CD or something else for
7 the main file. I have not seen where we have --

8 Q Have you done that before?

9 A Have I done where we provide the CD or
10 other --

11 Q Have you put a vid -- have you put a video
12 on e-Docket before?

13 A No.

14 Q Okay. Well, I guess -- you know, what did
15 we do last time? You had a video last time too.

16 A I'm -- I believe we may have looked at it
17 for informational purposes, and possibly I did not
18 ask to have it entered into evidence. I would be
19 fine withdrawing it with the understanding that the
20 Chicago Terminal is willing to fix the crossings. I
21 think it was just to give a better reference. For
22 me, it's -- the video is always worth a greater

1 amount of evidence to see whether repairs have been
2 completed or not.

3 Q I don't know, you know, about putting in a
4 video into evidence without it being an exhibit.

5 A Otherwise, in the past -- other cases we
6 have just provided the video in a hard copy format,
7 whether it be a CD or something else.

8 Q You haven't put -- you haven't filed it on
9 e-Docket. That's my concern.

10 A We have not. The space requirements on
11 e-Docket would be difficult.

12 MR. MICHAUD: If it's not -- I don't know that
13 it's necessary for any of our purposes here. We're
14 all --

15 JUDGE DUGGAN: Well, now, it's necessary for
16 appeals and things of this nature, for anybody who
17 has any questions about what exactly the evidence
18 warrants. That's my concern. I don't expect any
19 appeals. I don't expect anything, but...

20 MR. MICHAUD: I think, though, the nature of
21 this proceeding is more that we're sort of entering
22 into an agreed order on what's going to happen.

1 JUDGE DUGGAN: Well, yeah, but then down the
2 road it doesn't mean that -- we're talking about an
3 agreed interim order, compliance and penalties
4 are yet to be resolved.

5 I think that -- why don't you -- hang
6 on. Let me see if I can call Kathy.

7 Off the record.

8 (A discussion was held off
9 the record.)

10 JUDGE DUGGAN: Back on the record.

11 Okay. I just tried to check to see
12 how the clerk's office might handle the filing of a
13 video; couldn't get ahold of them, however. So just
14 now, before we went on the record, we had an
15 agreement that Mr. Vercruysse will go ahead and file
16 a DVD with the two videos, Exhibits 2 and 3 on there,
17 and mark that DVD as Exhibits -- as Staff's
18 Exhibits 2 and 3 in this docket, and provide a copy
19 of that to Mr. Michaud.

20 Is that agreed, Mr. Vercruysse and
21 Mr. Michaud?

22 Mr. Vercruysse?

1 MR. VERCROYSSSE: Yes, your Honor.

2 MR. MICHAUD: Yes.

3 JUDGE DUGGAN: Mr. Michaud?

4 MR. MICHAUD: Yeah.

5 JUDGE DUGGAN: Very good. Thank you.

6 All right. So the exhibits are
7 admitted into evidence, and that's how we're going to
8 handle that.

9 BY JUDGE DUGGAN:

10 Q Let's go ahead and -- okay. What we --
11 before we go on to Mr. Alonzo and any complaints as
12 to the Department of Transportation and acknowledge
13 it, let me ask you, Mr. Vercruysse, what repairs need
14 to be made -- do you think the Commission should
15 order to Route 64 at the subject crossing?

16 A Your Honor, for that eastbound inside lane,
17 Staff believes that the rubber crossing surface panel
18 that has settled needs to be removed. The asphalt
19 patch or hump that was placed in there needs to be
20 removed, whether by grinding or how -- if it can be
21 just scraped off the top, and hot mix asphalt needs
22 to be placed and compacted into those areas.

1 Q Those areas being both where you're
2 grinding the asphalt down?

3 A Where the settled -- where the settled
4 rubber surface pad was, and then only if additional
5 materials taken off when that bump or hump of asphalt
6 is there. It would depend on how easily that's taken
7 out, your Honor.

8 Q All right. So it's -- so this suggestion's
9 only for the eastbound inside lane, and so if they
10 left the rubber patch in there for the eastbound
11 outside lane, would that be compliance in your mind?

12 A Your Honor, the other -- it would be, yes.
13 And then I can explain further after you have
14 additional questions or if you'd like me to explain
15 further.

16 Q Yeah. Explain that one now.

17 A Okay. The rubber panels that have not
18 settled have provided a suitable surface for the
19 other sections; it's just this inside eastbound lane
20 that we have seen that had failed after the previous
21 repairs.

22 It -- the crossing surface meets our

1 concerns and the Administrative Code for rideability.
2 However, this gets back to the Chicago Terminals's
3 decision if they want to take all of the panels off.
4 They will work with the City of Chicago to get a
5 permit, which will include flaggers and just
6 individual lanes being closed at a time to do the
7 repairs. So --

8 Q Yeah. That's going -- you're going further
9 than my question.

10 A Right.

11 Q Okay. So I think basically where you're
12 going was that it's up to Chicago Terminal whether --
13 while they're at it, they may as well take up that
14 whole rubber panel and fix it?

15 Is that what you were getting at?

16 A Correct. If they feel it will fail in the
17 future.

18 Q Okay. Because, as you point out, they --
19 you have to deal with stopping not one lane, but
20 another lane or whatever logistics of it and the
21 permits of it, but -- okay.

22 What about repairs to the northbound

1 lanes of York Road? How many lanes are we talking
2 about there that need to be repaired?

3 A Your Honor, it should be all of the lanes,
4 and it should be similar to --

5 Q Which is what, two -- two plus median or
6 what?

7 A At least the two northbound outside lanes
8 where the crossing panels have all shown to either
9 have failed or settled. The segment in the median is
10 a little more solid, but Staff's recommendation would
11 be to take all the panels out and replace it with
12 asphalt, similar to the southbound lanes.

13 Q So is that up to the median or including
14 the median, where the rubber panels are?

15 A At this point Staff would just recommend
16 the entire stretch including the median.

17 Q Does that take you to a shoulder past
18 the --

19 A It takes you past --

20 Q You know, the shoulder's often part of the
21 crossing. It may not be the lane, but often people
22 get on the shoulder.

1 A It takes you out past the shoulder. There
2 is a six-to eight-foot-wide shoulder and those panels
3 are out in that section. I would just assume that
4 all of them would be taken out and that the
5 asphalt -- hot mix asphalt be placed in and
6 compacted.

7 Q Okay. So you recommend that all the
8 remaining rubber panels at this crossing be removed
9 and repaired with either hot asphalt or whatever
10 material the railroad believes will best meet the
11 goals, correct?

12 A Correct.

13 MR. MICHAUD: We're just talking about the
14 northbound lanes, right?

15 BY JUDGE DUGGAN:

16 Q Well, it's my understanding that all the
17 rubber panels left are in the northbound lanes,
18 and -- plus the median, plus the shoulder; is that
19 correct?

20 A Correct.

21 Q So the answer is not just northbound lanes,
22 but including the median and the shoulder and -- but

1 redefine the state that -- all the remaining rubber
2 panels?

3 A And, your Honor, that would be consistent
4 with what was done on the southbound lanes.

5 JUDGE DUGGAN: So we're about to ask
6 Mr. Michaud if he disagrees with those
7 recommendations as the extent of what needs to be
8 repaired.

9 MR. MICHAUD: Your Honor, I have to consult
10 with our contractor as well as our general manager,
11 but my understanding from talking to our general
12 manager prior to this hearing was that we were of the
13 opinion that the rubber panels needed to be pulled
14 out and replaced with new rubber panels. So it's new
15 for me to learn that it should be replaced with
16 asphalt -- or hot mix asphalt.

17 JUDGE DUGGAN: Well, now -- and actually, that
18 was Mr. Vercruysse's recommendation, and I suggested
19 a broader statement, that it be repaired and filled
20 in with whatever material the railroad felt was
21 appropriate for it's -- you know, understanding that,
22 you know, you don't want it to deteriorate. Again,

1 you want something that's going to last. But...

2 THE WITNESS: Your Honor, if I may, my
3 recommendation -- or Staff's recommendation was to
4 get it to the minimum requirements in what
5 southbound -- I guess, Mr. Michaud, did your track
6 department provide a different assessment or a
7 different plan?

8 It's just a recommendation, your
9 Honor. The railroad, as long as they provide a
10 crossing surface that allows for vehicles to travel
11 at the speed limit through the crossing, it's
12 acceptable. But I guess I did -- I was not aware of
13 a plan or discussion to replace these as- -- replace
14 these rubber panels. My assumption was they were
15 going to do what they did southbound.

16 JUDGE DUGGAN: Okay. Well, in any event, the
17 fact is that Mr. Michaud has raised that at this
18 point, but he doesn't really know, and I don't really
19 see a problem with us just telling them to, as you
20 say, fix it. But take up the existing rubber -- fix
21 it by taking up the existing rubber panels and then
22 repair the crossing to a smooth crossing, to an even

1 crossing with whatever materials the railroad
2 believes is appropriate.

3 MR. MICHAUD: We're agreeable to fixing it to
4 meet the -- to satisfy the minimum standards.

5 BY JUDGE DUGGAN:

6 Q Yeah. We don't have to say "asphalt," or
7 "rubber," or "cement" or whatever, right --

8 A Right.

9 Q -- Mr. Vercruysse?

10 A Correct.

11 We do not have that ability to say
12 that. I can say that I'm happy to meet the Chicago
13 Terminal's contractor or their superintendant or road
14 master to go through and review which segments and
15 what their plan is.

16 JUDGE DUGGAN: Well, but I think which segment
17 and how to repair are two different questions. And
18 so far, clarifying that all the existing rubber
19 panels be taken up is -- I was asking if you had a
20 disagreement with that, Mr. Michaud.

21 MR. MICHAUD: The only one that I would be --
22 you're recommending that the shoulder be part -- be

1 included. I'm not sure -- without having gone out
2 there recently, I guess I would defer to
3 Mr. Vercruysse meeting with our superintendent and
4 coming up to an agreeable solution on what will be
5 satisfactory to Staff as far as safety and --

6 JUDGE DUGGAN: Well, hold on.

7 The problem is we're having a hearing
8 today. An order's going to be entered on the
9 evidence today, not upon what Mr. Vercruysse and
10 somebody does weeks later.

11 THE WITNESS: Your Honor, I believe -- Staff
12 believes that it should just be identified that the
13 railroad needs to fix the crossing and make repairs
14 in accordance with the Administrative Code.

15 Not that I see it as being likely, but
16 if they were able to get a certain amount of funding,
17 just to the north of this crossing, they worked with
18 IDOT and did a complete new crossing: new ties, new
19 track, new concrete crossing surface panels.

20 BY JUDGE DUGGAN:

21 Q Okay.

22 A I'd rather give ourselves the option. They

1 can come in in here and put composite panels, timber
2 panels, asphalt, or new rubber --

3 Q Okay.

4 A -- if they showed it worked. Or they can
5 put in new track --

6 Q We're going beyond my point again.

7 A Okay.

8 Q I was addressing the issue of the shoulder
9 and the median, and so I'm going to shoot this at you
10 again, Mr. Vercruysse.

11 A Sure.

12 Q Is it your opinion that the shoulder is
13 sufficiently uneven that it need to be repaired --

14 A Honestly, it's no- --

15 Q -- or can you not do the rest of it
16 without -- reasonably without doing the shoulder?

17 A No. They could address the two northbound
18 lanes, which are main travel lanes, and that's
19 Staff's main concern. Because of how the median had
20 been used in the past, I believe that that would need
21 to have additional repairs completed also.

22 Q Okay.

1 A The shoulder, from the video and different
2 field reviews, I don't know and I could not say that
3 it does require repairs. Looking at it off of the
4 video or pictures, it does not look that bad and it's
5 not the main travel of lanes. So...

6 Q Okay. So you would recommend the two
7 northbound lanes and the median, that that area of
8 the crossing be brought up to Commission standards?

9 A Correct.

10 Q Which is -- I mean, it's -- and I have to
11 go get the exact language, but it's -- you're saying
12 it's just an even surface.

13 A Correct.

14 Q A level surface, right?

15 A Yes.

16 Q All right. And then, yeah, with whatever
17 materials.

18 Do we want to say hot mix at North
19 Street [sic] either? Because your recommendation was
20 pull up the rubber panel there even if it's just the
21 eastbound portion and replace that with hot mix.

22 Is that something we should also limit

1 the method of repair, or just say repair?

2 A I would recommend repair.

3 JUDGE DUGGAN: Okay. Any objection to those

4 recommendations, Mr. Michaud?

5 MR. MICHAUD: No. I have a sort of a question,

6 which is that on the picture showing the northbound

7 lanes, the road itself appears to be pretty damaged

8 and, you know, I want it to be clear that that's not

9 going to be the railroad's responsibility to fix.

10 JUDGE DUGGAN: Yeah. I think -- I guess

11 that's -- but obviously, you're responsible for

12 repairs two feet out from each outer rail, and beyond

13 that -- so that's the crossing. That's the crossing

14 you're responsible for making even. I guess if you

15 had a road that's not even, then you try to figure

16 out how to make it even, I don't know what to do

17 about that.

18 I'm not going to worry about it. How

19 does that sound?

20 MR. MICHAUD: That sounds good.

21 JUDGE DUGGAN: Better? You guys are good?

22 Okay.

1 Now, the next thing I wanted to do was
2 to have Mr. Alonzo testify if we're -- let's put it
3 this way: I'm ready for Mr. Alonzo to testify unless
4 someone else has something other than what we've
5 already discussed. And I understand that
6 Mr. Vercruysse is suggesting that the railroad may
7 want to talk to IDOT to see if they can get any
8 funding. We don't need to deal with that on the
9 record, though.

10 JOE ALONZO,
11 called as a witness herein, having been first duly
12 sworn, was examined and testified as follows:

13 EXAMINATION

14 BY

15 JUDGE DUGGAN:

16 Q Mr. Alonzo, state your name.

17 A Yes. Joe, J-O-E, Alonzo, A-L-O-N-Z-O. And
18 I work with the City of Chicago Department of
19 Transportation. Telephone number is area code (312)
20 744-1731; the mailing address is 30 North LaSalle
21 Street, Chicago, Illinois 60602.

22 Q Okay. Have you been in contact with

1 Mr. Vercruysse regarding the eastbound inside lane at
2 Route 64 and North Avenue --

3 A Yes, I have.

4 Q -- also?

5 A Yes, I have.

6 Q Okay. And what has caused you to be in
7 that contact?

8 A Well, it goes over as stated in previous
9 discussions that it's been ongoing over the last
10 couple of years where we had complaints from the
11 alderman's office residents and internal staff at the
12 City that indicated that it was in disrepair. And so
13 we ended up going into the proceedings that we are
14 currently going through. But it happened about a
15 year and a half ago, and actually had Iowa Pacific go
16 in and make some temporary repairs to crossing on
17 North Avenue.

18 Subsequent to that repair, you know,
19 there'd been some deterioration of the crossing
20 again, where there was, again, correspondence via
21 e-mail, telephone, and in-person discussions on the
22 crossing itself where we actually were discussing

1 trying to actually improve the crossing again.

2 Q But, again, here today, we're -- it appears
3 that Mr. Vercruysse -- even though the citation
4 doesn't limit it accordingly, Mr. Vercruysse has
5 limited it to the eastbound inside lane.

6 Have you communicated with him
7 specifically about the present condition of the
8 eastbound inside lane?

9 A Yes, I have.

10 Q Okay. And what has caused those
11 communications?

12 A Again, it's been through the complaints
13 through the alderman's office and their staff as well
14 as internally. When they get residential complaints,
15 it gets input into the, what we call the CSR 311
16 System, where Chicago residents call into the city
17 system and they report a complaint on the condition
18 in the City of Chicago, in this case being the
19 railroad crossing.

20 And so then that gets funneled through
21 the bureaucracy of the City of Chicago coming to me,
22 and then we actually -- or I actually try to

1 communicate with the railroad to see whether or not
2 they can actually make an improvement or a repair to
3 the crossing, based on the complaint that we get.

4 Q Okay. Have you, yourself -- have you,
5 yourself, had communications with anyone from the
6 railroad?

7 A Yes. There have been --

8 Q And what response did you receive regarding
9 repairs to this crossing?

10 A There've been different responses. One,
11 you know, the initial responses were, you know, I
12 went on site with Superintendent Tim Fuhrer, and we
13 were on site --

14 Q So he's the superintendent for the
15 railroad?

16 A Yes, he is.

17 Q And how do you spell -- I don't suppose you
18 know how to spell his last name, do you?

19 A F --

20 MR. MICHAUD: F-U-H-R-E-R. He was here in
21 previous hearings.

22 JUDGE DUGGAN: I understand, but we need to

1 spell it for the record, so I'm worried about the
2 spelling.

3 MR. MICHAUD: Yeah.

4 JUDGE DUGGAN: So it's F-U-H-R-E-R?

5 MR. MICHAUD: Yes.

6 JUDGE DUGGAN: Very good.

7 BY JUDGE DUGGAN:

8 Q Okay. Mr. Alonzo, you were saying you had
9 communications with Mr. Fuhrer.

10 Did you say you went on site with him
11 regarding the eastbound inside lane?

12 A Yes, twice actually. The first time --

13 Q And number one, when you viewed it, do you
14 believe that it needed repair?

15 A Yes, I did.

16 Q Number two, did Mr. Fuhrer indicate whether
17 he think it needed repair?

18 A Yes, he indicated that as well.

19 Q Did he indicate when and how they would do
20 it or why they couldn't do it yet?

21 A He indicated how, and he actually indicated
22 that he would remove the rubber panels. But in

1 addition to that, he actually did state during that
2 first on-site inspection that to -- actually,
3 thinking forward and doing preventative maintenance,
4 the rubber panels to the westbound lanes, he thought
5 should be replaced as well, knowing that they would
6 not need to be replaced due to condition. But he did
7 indicate that the one that was on the eastbound lane
8 should be replaced more to the immediate effect.

9 Q All right. And did he indicate any
10 immediate plans to take care of it?

11 A He did. He indicated that he would -- he
12 had the intention of replacing it. He just never
13 gave a specific timetable. He said he was going --
14 he would communicate with the permit office and get
15 the permit and actually do the work within a time
16 frame that he said would be in the short-term, but
17 not giving a specific date.

18 Q Do you know -- do you know approximately
19 when you met with him out there?

20 A The first time, it was either late winter
21 or early spring.

22 Q So this is has been a problem since then?

1 A Yes.

2 Q And the second time?

3 A It was actually an on-site meeting that was
4 a little bit different from the complaint itself, but
5 it was actually a status and a project intention of
6 the State of Illinois, that being IDOT, wanting to
7 actually indicate to the Iowa Pacific they were --
8 that they had every intention -- because of the fact
9 that they had funding and it was ranked high as one
10 of crossings that would need repair -- to actually do
11 the project this year, to actually replace, in kind
12 with new materials, the crossing itself.

13 But based on information that was
14 given to the people on site, it was -- besides CDOT,
15 it was also IDOT represented and the railroad. It
16 was the railroad who actually did not necessarily
17 support that project because of the fact that they no
18 longer had customers south of that crossing. So...

19 Q When was the second time you met on site?

20 A The second time was early summer. I can
21 get a more specific date, I'd have to check.

22 Q So you're saying that the railroad doesn't

1 have any customers on that line and that IDOT was
2 considering helping to --

3 A They actually --

4 Q -- repair that? Is that what I understood?

5 A Yeah. They actually had programmed and
6 they had the funding in place to replace, with new
7 materials, the whole crossing.

8 Q And then so that's what Mr. Fuhrer's
9 waiting on?

10 A No. Actually, that's what the State was
11 intending to do unbeknownst to the City. They
12 informed us and they informed the railroad. The
13 railroad did not necessarily support that. But based
14 on the information that was provided that they did
15 not have any more customers south of there, so they
16 didn't feel any need to actually replace the crossing
17 any longer.

18 Q Who's "they," the railroad or IDOT?

19 A The railroad, that being the superintendant
20 who indicated that -- provided that information.

21 Q All right. Now --

22 A So as a result, the State --

1 Q No. No. No. No. Wait.
2 You got to give shorter answers,
3 please.
4 A Okay.
5 Q Did you discuss any of this with IDOT?
6 A Discuss what?
7 Q Okay. You just discussed -- to my
8 understanding -- and, in fact, I'm having a little
9 bit of a hard time hearing you. That's part of the
10 problem here.
11 To my understanding, it was suggested
12 to you that IDOT may pay to rebuild the crossing.
13 Did I hear that right?
14 A Yes. They actually did have it programmed
15 to fund it.
16 Q All right. Now -- now, my question was
17 have you discussed this with IDOT?
18 A They were actually at that meeting where
19 that information was conveyed.
20 Q Have you subsequently discussed that with
21 IDOT?
22 A No, not since that on-site meeting.

1 Q Okay. So you really -- and that was in the
2 early summer, correct?

3 A Yes.

4 Q Okay. So roughly three, four months later,
5 we don't know any more than what was said there that
6 day, correct?

7 A No. Other than the fact that I actually
8 ran into the IDOT representative two, three weeks
9 ago, and he indicated that the funds were withdrawn
10 for that project.

11 JUDGE DUGGAN: Okay. That's what I asked you,
12 if you had talked with IDOT since then.

13 All right. Let's see. So -- all
14 right.

15 Any questions of Mr. Alonzo,
16 Mr. Michaud?

17 MR. MICHAUD: It's -- I mean, we're sort of
18 getting into hearsay here. I mean, we're asking
19 Mr. Alonzo to testify as to what Tim Fuhrer said to
20 him.

21 JUDGE DUGGAN: Well, it could be admissions
22 against interest, but --

1 MR. MICHAUD: I --

2 JUDGE DUGGAN: -- and he isn't doing you harm.

3 MR. MICHAUD: Personally, I've been told a

4 different opinion from Mr. Fuhrer, which is that it

5 doesn't -- he doesn't think that the North Avenue

6 crossing is all that bad, granted he's -- I don't

7 think he compared it to what is required by, you

8 know, statute or whatever the ordinance is that

9 you -- that Staff uses. But I was of a different --

10 I was told that he -- I was under the impression he

11 had a different opinion than what Mr. Alonzo

12 represented.

13 JUDGE DUGGAN: Okay. Well, I tell you what, I

14 mean, I appreciate that, that -- but frankly, the

15 recommendation is not going to depend upon, you

16 know -- it's nice to have a consensus of opinion, but

17 ultimately it's really dependent upon the evidence

18 shown here today.

19 Mr. Alonzo is of the opinion it needs

20 to be repaired, so Mr. Fuhrer -- did I hear you right

21 on that? I don't think I made that up.

22

1 BY JUDGE DUGGAN:

2 Q Mr. Alonzo, you said you did think it
3 needed to be repaired?

4 A Yes.

5 Q And you've received complaints through --
6 funneled to you from the sources that -- the way you
7 get information and complaints, right?

8 A Yes, and through the alderman's office.

9 JUDGE DUGGAN: Okay. Yeah.

10 All right. So, yeah, it's not going
11 to rise or fall on Mr. Fuhrer's hearsay opinion
12 through you or Mr. Alonzo.

13 Okay. Anything further of this
14 witness, Mr. Michaud?

15 MR. MICHAUD: No.

16 JUDGE DUGGAN: Mr. Vercruysse?

17 MR. VERCruysse: No, your Honor, thank you.

18 JUDGE DUGGAN: Okay. Now, I believe we dealt
19 with this before. I can't remember if Mr. Alonzo can
20 play a role in assisting in the permit process or
21 not.

22

1 BY JUDGE DUGGAN:

2 Q Can you, Mr. Alonzo?

3 A Yes, I could.

4 Q Okay. So you state that you are available
5 to the railroad?

6 A Upon their request, yes.

7 Q Right. They call you and you do what you
8 can, and then you can discuss with Mr. Vercruysse,
9 keep him apprised of any problems that are obstacles
10 from the City. Again, whether the City doesn't want
11 to close a road for this reason, whether there's
12 other road work going on. Anything that the railroad
13 can't control, would you agree to keep Mr. Vercruysse
14 apprised of?

15 A Yes, I will.

16 Q Okay. And you will also be cooperating
17 with Mr. -- with the railroad upon their request,
18 correct?

19 A Yes.

20 Q To your knowledge, does the railroad know
21 how to contact you?

22 A Yes, they do. And they actually -- the

1 last time when they actually did the road repair and
2 I got the permit, I actually physically took them to
3 the actual office in City Hall, showing them exactly
4 where it's at and kind of hand-held them during the
5 first attempt to get the permit. So they actually
6 have done subsequent to that on their own; they know
7 where to go and what to do.

8 JUDGE DUGGAN: All right. And Mr. Michaud, do
9 you agree -- do you know how to contact Mr. Alonzo?

10 MR. MICHAUD: Yes.

11 JUDGE DUGGAN: Okay. So you know that the
12 offer's there to help this process.

13 So, again, before we went on the
14 record, we discussed that I will be able to get an
15 order. I can tell you now, based upon the evidence,
16 that my recommendation to the Commission is that --
17 will be that they enter an order that these repairs
18 be done consistent with what Mr. Vercruysse has
19 recommended. And that I would recommend to the
20 Commission that the order be that the repair's done
21 by November 15th.

22 Do you know any reason why that is not

1 a reasonable time frame, given what is under the
2 railroad's control, which excludes weather, asphalt
3 availability, and City permitting -- granting or not
4 granting for reasons that have nothing to do with
5 you?

6 So let's say that the railroad can get
7 their asphalt and get their permit, and the railroad
8 uses all good faith to proceed in a timely fashion,
9 understanding that the Commission will likely order
10 this.

11 Given those assumptions, Mr. Michaud,
12 is there any reason you know of why a time frame of
13 November 15th would be unreasonable?

14 MR. MICHAUD: No.

15 JUDGE DUGGAN: Okay. So once again, I think
16 that you would expect that the -- as what's
17 requested, again, off the record, I think, that some
18 sort of a status report be given to -- and filed on
19 e-Docket -- even though you may have to go through
20 Mr. Vercruysse to get it filed on e-Docket -- that
21 nonetheless -- you also agree with giving a status
22 report on October -- excuse me -- November 4th; is

1 that correct, Mr. Michaud?

2 MR. MICHAUD: Yes.

3 JUDGE DUGGAN: And that, of course, means that
4 you can only provide the information that -- at that
5 point, I would expect the following to mitigate any
6 aggravating factors: would be your contacts you've
7 made to provide the materials for the repair, whether
8 it be asphalt or concrete or other rubber panels;
9 that you schedule the repairs as best you're able
10 that -- consistent with efforts made to obtain a
11 permit.

12 BY JUDGE DUGGAN:

13 Q Mr. Alonzo, did you say they're 30-day
14 permits?

15 A Approximately. They're actually flexible.
16 They can actually provide a 7-day permit, 14-day
17 permit, whatever's requested or needed by the
18 railroad.

19 JUDGE DUGGAN: At any rate, that the length of
20 a permit be sought that allows the railroad the
21 flexibility it needs and the City's willing to grant.

22 So I think that those three things, if

1 nothing else, would be in a status report for, that
2 the efforts made -- time and efforts made to obtain
3 the materials, get the permit, and to schedule the
4 work.

5 Should be available by October 4. And
6 the only reason I'm qualifying any of this is because
7 for some reason you don't get an order by October --
8 by -- excuse me -- November 4 -- that you don't get
9 this order by November 4th or you get to the order
10 November 3rd, that, nonetheless, you can file the
11 report with at least that much information. That's
12 what I'm getting at.

13 And then, on the other hand, if you
14 have the -- had the order in time to be more specific
15 about anything, then that could also be included in
16 the report.

17 Does that make sense to you? It's
18 something you think you can comply with, Mr. Michaud?

19 MR. MICHAUD: Getting the order to Brian on or
20 before November 4th and everyone else here, I can
21 certainly provide that update.

22 JUDGE DUGGAN: Yeah. A report, not an order.

1 MR. MICHAUD: Report. I'm sorry.

2 JUDGE DUGGAN: A report that, at the very
3 least, shows your good faith efforts -- well, because
4 anyway, there's no reason why, at that point, you
5 should not be able to report your good faith efforts
6 to obtain the materials to repair both crossings,
7 your efforts to obtain the permit from the City, and
8 your -- and the scheduling the work to be completed
9 by November 15th. I think that's what your report
10 made for us should include at a minimum.

11 And so my question was do you see a
12 problem doing that?

13 MR. MICHAUD: I do not see a problem with doing
14 that.

15 JUDGE DUGGAN: Very good.

16 So that is what I'll recommend to the
17 Commission, and then the Commission will do as they
18 will.

19 Mr. Vercruysse, do you want to make a
20 stab at drafting the order? And frankly, the reason
21 is because I'm not going to get a copy of this
22 transcript in time to get some details that you may

1 have had in your head about the evidence presented
2 today.

3 I've probably got it, but if you
4 could -- if you don't mind taking a stab, Mr.
5 Vercruysse --

6 MR. VERCRUYSSSE: I'll --

7 JUDGE DUGGAN: -- would you do that?

8 MR. VERCRUYSSSE: Yeah, I will. And then the
9 only thing I need to identify is that I will be out
10 of town Thursday through Monday. So I'll do it
11 tomorrow and then it will be to the form that I think
12 is acceptable, and then whatever you would want to
13 add.

14 JUDGE DUGGAN: Okay.

15 MR. VERCRUYSSSE: Thank you.

16 JUDGE DUGGAN: And Mr. Michaud, do you want to
17 waive the prohibition against ex parte communications
18 for the purpose of us all being in the loop to draft
19 this order?

20 MR. MICHAUD: Yes, that's -- yes.

21 JUDGE DUGGAN: Okay. So in other words,
22 Mr. Vercruysse can do a draft, send it to both of us.

1 I can make whatever revisions I think need to be
2 made, you can make your suggested revisions, and then
3 we'll circulate one more time and hope to get an
4 agreed order.

5 Is that something that you think works
6 for you, Mr. Michaud?

7 MR. MICHAUD: Yes.

8 JUDGE DUGGAN: Okay. And the other thing is we
9 probably, as practical matter, have to get a waiver
10 of proposed orders, or else I got to get it out real
11 quick because you get 14 -- 14 days. I could shorten
12 the time to respond to this proposed order, but it
13 kind of cuts into the time frames of the bureaucracy.
14 And so I'll be asking you to -- once -- if we can
15 agree upon terms of an order, or at least the -- you
16 know, I'm not asking you to agree to the -- well, I
17 guess I am asking you to agree to an order. If you
18 don't, you know, we just draft it and send it out as
19 a proposed order.

20 But do you know -- do you understand
21 what I'm talking about a proposed order, Mr. Michaud?
22 The rules require that if anyone is not in agreement,

1 that we send out a proposed order and give them time
2 to respond to state why they disagree with this
3 proposed order. And, you know, so very often -- as a
4 matter of fact 90 percent of the time -- 99 percent
5 of the time people come in, they see where the --
6 they see where things are going, and they just try to
7 get what they want out of it, and then agree to an
8 order, which saves us all a bunch of time.

9 But you by no means have to waive it.
10 It just means I got to work faster to get the order
11 out to you and tell you you've got, like, 10 or 14
12 days to respond. And if you do respond, then I give
13 Brian five days to respond. But one way or the other
14 I know I can still get it out for the 19th or the
15 26th. But if you agree, I will send out a waiver of
16 proposed order waiver format, so you waive the right
17 to a proposed order.

18 Do you follow that at all?

19 MR. MICHAUD: You mean waive the right to
20 object to the proposed order?

21 JUDGE DUGGAN: In a fashion, yeah.

22 MR. MICHAUD: I mean, I'd like --

1 JUDGE DUGGAN: I mean, you haven't seen it.

2 MR. MICHAUD: -- I'd like to have an
3 opportunity to review the proposed order if I'm going
4 to be --

5 JUDGE DUGGAN: Oh, yeah. No, that's the idea.
6 The idea is that we'll all e-mail our drafts and
7 we'll either come to terms or we will not. And if
8 you just say, "Well, I just can't agree to this,"
9 well, that's fine. I'll just -- I just send out a
10 proposed order and wait for you to say why you don't
11 think that should be entered. So we'll go forth that
12 way.

13 MR. MICHAUD: So long as I'll have an
14 opportunity to review the proposed order prior to it
15 becoming final, I am agreeable.

16 JUDGE DUGGAN: Yeah. Okay. Then we'll cross
17 that bridge when we get to it because I don't -- I
18 won't even send you out a request for the waiver
19 until we have what we all agree to terms of. Okay?

20 And the if you choose not to agree,
21 you don't do it. Okay?

22 MR. VERCRUYSSSE: Your Honor --

1 JUDGE DUGGAN: But in the meantime you did
2 say -- you did say you'd waive the ex parte
3 prohibition so we could circulate proposed orders
4 and --

5 MR. MICHAUD: Yes.

6 JUDGE DUGGAN: Okay. All right. Very good.

7 Someone want something else?

8 MR. VERCRUYSSSE: Your Honor, it's
9 Mr. Vercruysse.

10 In terms of November 15th as a
11 completion date, is there something that you envision
12 happening after that time frame? The -- one of the
13 parties identifies that's it's been complete or do
14 you want to have a follow-up hearing or a filing?
15 What would you anticipate? Or, in, hopefully, the
16 unlikely event that the work isn't completed, what
17 would you entertain?

18 JUDGE DUGGAN: Well, I think what we did last
19 time -- remember when we entered the -- had the -- I
20 don't recall -- the interim order or whatever, but
21 entered the orders requiring to be it done -- to do
22 it, reserve issues of penalties, et cetera, and then

1 you monitor the work. And I can't remember how the
2 communications worked, but one way or the other I was
3 kept appraised of excuses or problems they were
4 having. And I don't know if we did a phone
5 conference or whatever, but I do think this: that you
6 or Mr. Michaud, either one can e-mail me with your
7 status, your observations, but you should e-mail it
8 to everybody.

9 You know, if you e-mail something to
10 me telling me what's going on, you need to include
11 Mr. Michaud. Mr. Michaud, if you got something you
12 want to tell me, then you tell both of us by e-mail
13 so we've got a record of that.

14 But as I say, I can't remember exactly
15 how we did it last time, but, you know, I was made
16 aware when it wasn't done, made aware of the reasons
17 why it wasn't done, made aware of the next time frame
18 and who was going to check back, and all this stuff,
19 until we finally -- and, you know, whether it was
20 time to have a useful hearing or whether we -- wasn't
21 useful.

22 MR. VERCRUYSSSE: Okay.

1 JUDGE DUGGAN: So that's my first suggestion,
2 is that I think you're generally on top of it, Brian.
3 If it's better for me to be involved in some fashion,
4 let me know. But otherwise, I think you just e-mail
5 me statuses, e-mail me and Mr. Michaud both statuses
6 with your recommendations as to whether we need to
7 get together, whether we need to wait for a month.
8 Again, Mr. Michaud can make his recommendations too,
9 say, "I want to get together," you know.

10 Does that work for you,
11 Mr. Vercruysse?

12 MR. VERCRUYSSSE: That's fine, your Honor.
13 Thank you. I'll discuss with Mr. Michaud and any
14 language as far as other updates.

15 JUDGE DUGGAN: Yeah.

16 You know, I mean, again, what happened
17 last year is, frankly, they didn't make the deadline.
18 Between city permits and the weather and the asphalt,
19 and the fact is that I think the order didn't get out
20 till probably November 7th, I don't know. But in any
21 event -- and so that's -- we just followed it, then
22 didn't have a hearing until -- it wasn't until it was

1 done. We might have had a status hearing by phone or
2 something like that, but I don't know anything -- I
3 don't know any other way to do it, really,
4 practically.

5 MR. VERCRUYSSSE: That's fine, your Honor, thank
6 you.

7 JUDGE DUGGAN: And is that agreeable with you,
8 Mr. Michaud?

9 MR. MICHAUD: Yes.

10 JUDGE DUGGAN: All right. Good deal.

11 So obviously, you two can discuss with
12 each other anything you want, but if somebody's going
13 to give me something, you need to e-mail it to
14 everybody.

15 So anything else. Mr. Vercruysse?

16 MR. VERCRUYSSSE: No, your Honor, thank you.

17 JUDGE DUGGAN: Mr. Michaud?

18 MR. MICHAUD: No, your Honor.

19 JUDGE DUGGAN: Okay. Mr. Policcichio?

20 MR. POLICICHIO: No. Thanks.

21 JUDGE DUGGAN: Very good.

22 Okay. Then I think -- I don't think

1 I'd mark the record heard and taken. I just think
2 that we're going to continue generally for
3 determination to assess the progress and any
4 penalties that may be advised.

5 So that will conclude the record for
6 today, Mr. Benjamin.

7 Thank you.

8 (Staff Group Exhibit No. 1
9 and Staff Exhibits 2 and 3
10 were marked for
11 identification.)

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